

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KHADEMI DAVOOD,

Plaintiff,

v.

JIMMANZ, et al.,

Defendants.

Case No. 1:21-cv-01394-SAB (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR APPOINTMENT OF EXPERT
PSYCHOLOGIST AND INVESTIGATOR OR
ATTORNEY

(ECF No. 16)

Plaintiff Khademi Davood is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's motion for appointment of expert psychologist and investigator or attorney, filed December 16, 2021. (ECF No. 16.)

Under Federal Rule of Evidence 706(a), the Court has the discretion to appoint an expert witness *sua sponte* or upon a party's motion and may apportion costs of an appointed expert. Fed. R. Evid. 706; Walker v. American Home Shield Long Term Disability Plan, 180 F.3d 1065, 1071 (9th Cir. 1999). However, the purpose of a court-appointed expert under Rule 706 is to assist the trier of fact, not to serve as an advocate. See Pedraza v. Jones, 71 F.3d 194, 196 (5th Cir. 1995) ("[t]he plain language of section 1915 does not provide for the appointment of expert

witnesses to aid an indigent litigant.”); accord, Boring v. Kozakiewicz, 833 F.2d 468, 474 (3d Cir. 1987), cert. denied, 485 U.S. 991 (1988). Importantly, these principals are not altered when a district court authorizes a party to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Dixon v. Ylst, 990 F.2d 478, 480 (9th Cir. 1993); see also Tedder v. Odel, 890 F.2d 210, 211–12 (9th Cir. 1989) (an indigent prisoner must bear the costs of litigation, including payment of fees or expenses for witnesses); Jacobsen v. California, No. 1:14-cv-00108-JLT (PC), 2016 WL 7429154 (E.D. Cal. Dec. 23, 2016) (“Plaintiff’s *pro se, in forma pauperis* status alone is not grounds for the appointment of an expert witness to assist him with his case.”). Rather, an expert may be appointed to assist the trier of fact only where it “will promote accurate factfinding.” Gorton v. Todd, 793 F. Supp. 2d 1171, 1179 (E.D. Cal. 2011). “Further, in order to demonstrate such necessity, there also must be some evidence, admissible or otherwise, that demonstrates a serious dispute that could be resolved or understood through expert testimony.” Id. at 1181. Finally, where the costs would likely be apportioned to the government, the Court “should exercise caution.” Manriquez v. Huchins, No. 1:09-cv-00456-LJO-BAM PC, 2012 WL 5880431, *12 (E.D. Cal. Nov. 21, 2012). “Rule 706 is not meant to provide an avenue to avoid [the *in forma pauperis* statute] and the prohibition against using public funds to pay for the expenses of witnesses.” Id. (collecting cases). The Court does not find any circumstances at this time that warrant the appointment of an expert psychologist. At this early stage of the litigation, the Court cannot determine that Plaintiff’s claims require expert assistance. Moreover, Plaintiff has not yet alleged any cognizable claims; therefore, appointment of a medical expert is premature and shall be denied.

As to his request for appointment of an investigator, as previously noted, Plaintiff has been granted leave to proceed with this action *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 6.) However, the *in forma pauperis* statute does not authorize the expenditure of public funds for investigators. See 28 U.S.C. § 1915; see also Hadsell v. Internal Revenue Service, 107 F.3d 750, 752 (9th Cir. 1997); Dixon, 990 F.2d at 480; Brown v. Johnson & Johnson, Inc., Case No. 1:17-cv-01285-AWI-EPF, 2018 WL 5734531, *2–3 (E.D. Cal. Oct. 31, 2018) (holding that “the Court is without authority to appoint an investigator or researcher to assist Plaintiff.”).

1 Accordingly, Plaintiff's request to appoint an investigator shall also be denied.

2 Alternatively, Plaintiff seeks appointment of an attorney. However, as the Court
3 previously noted in its December 6, 2021 order denying a similar request to appoint counsel (see
4 ECF No. 14), Plaintiff does not have a constitutional right to appointed counsel in this action,
5 Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney
6 to represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court
7 for the Southern District of Iowa, 490 U.S. 296, 298 (1989). For the same reasons previously
8 discussed, the Court does not find the required exceptional circumstances present here. See Rand,
9 113 F.3d at 1525. Namely, Plaintiff has not demonstrated his case is exceptional. Wilborn v.
10 Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). Nor can the Court determine Plaintiff is likely
11 to succeed on the merits where the Court's December 15, 2021 screening order dismissed the first
12 amended complaint for failure to state a cognizable claim (see ECF No. 15), and no amended
13 complaint is yet on the record. Accordingly, Plaintiff's motion for the appointment of counsel
14 shall be denied.

15 Based on the foregoing, it is HEREBY ORDERED that:

- 16 1. Plaintiff's motion to appoint an expert psychologist is DENIED;
- 17 2. Plaintiff's motion to appoint an investigator is DENIED; and
- 18 3. Plaintiff's motion for appointment of counsel is DENIED, without prejudice.

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20 IT IS SO ORDERED.

21 Dated: December 20, 2021


UNITED STATES MAGISTRATE JUDGE